IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1772 OF 1997

Namdeo Bikkad & Anr. ....Petitioners
V/s.
State of Maharashtra ....Respondent

Mrs.Anjali Helekar i/b Mr.V.P. Navare for the Petitioner.
Mr.C.R. Sonawane, A.G.P. for the Respondent.

CORAM : R.M. LODHA, &
S.J. VAZIFDAR, JJ.
DATED : 14TH JULY, 2006.

P.C. :

. The petitioners seek to impugn the Government Resolution dated 9.9.1988 (Exhibit "A") and the subsequent Government Resolution dated 9.10.1990 (Exhibit "B") by means of this writ petition. By the Government Resolution dated 9.9.1988 certain procedure has been prescribed for compulsory retirement of teaching and non-teaching staff of the private secondary schools. By the subsequent Government Resolution dated 9.10.1990, the State Government has clarified that an amendment to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "the Rules of 1981") is required to be introduced for giving an effect to the

Government Resolution dated 9.9.1988 in so far as it applies to the compulsory retirement and that in view thereof the Rules of 1981 are being amended. The principal grievance raised by the petitioners in this writ petition is that a provision for compulsory retirement of the teaching and non-teaching staff of the private secondary schools cannot be made by the Government Resolution without amending the Rules 1981.

2. In reply affidavit filed by the respondent through Jayshree N. Sonawane, Desk Officer, School Education and Sports Department, it is stated that pension scheme applicable to the State Government employees having been made applicable to the teaching and non-teaching staff working in the private aided schools, as a part of entire pension scheme, the Government Resolutions dated 9.9.1988 and 9.10.1990 came to be issued. According to the State Government, the pension scheme includes review of performance of an employee at the age of 50/55 years. The Rules of 1981 have been made applicable in the year 1981 and thereafter many changes have taken place in respect of the educational policy. It is clarified in the affidavit that the work of revision of the Rules of 1981 have started and that at this stage drafting of the Rules is at final stage.

3. In its resolution dated 9.10.1990, the State Government has clarified that the amendment to the Rules of 1981 is required for giving effect to the Government Resolution dated 9.9.1988. The Government thus accepts the position that the provision for compulsory retirement of teaching and non-teaching staff of the private aided schools can be made by the amendment in the Rules of 1981. Obviously, therefore, until the Rules of 1981 are amended or fresh rules are framed by the State Government, the procedure for compulsory retirement for teaching and non-teaching staff of the private aided schools sought to be introduced by the resolution dated 9.9.1988 cannot be made effective. This position is admitted by the State Government not only in its resolution dated 9.10.1990 but also in the affidavit dated 15.6.2006. This position is also accepted by Mr.C.R. Sonawane, Assistant Government Pleader.

4. With the aforesaid clarification, the writ petition is disposed of. No costs.

(R.M. LODHA, J.)

(S.J. VAZIFDAR, J.)